

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 05-44481(RDD)

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5 In the Matter of:

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7 DPH HOLDINGS CORP., ET AL.,

8

9 Debtors.

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13 U.S. Bankruptcy Court

14 300 Quarropas Street

15 White Plains, New York

16

17 November 14, 2013

18 10:05 AM

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20 B E F O R E :

21 HON ROBERT D. DRAIN

22 U.S. BANKRUPTCY JUDGE

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1 Hearing re: Notice of Agenda Proposed Eighty-Sixty Omnibus
2 Hearing Agenda

3
4 Hearing re: Motion to Authorize Reorganized Debtors Motion
5 for Order Pursuant to 11 U.S.C. 105(a) and 1142 and Fed. R.
6 Bankr. P. 3020(d) Authorizing the Reorganized Debtors to
7 Dispose of Non-Essential Records

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9 Hearing re: Debtors Motion to Compel

10
11 Hearing re: Notice of Agenda Proposed Sixty-Fourth Claims
12 Hearing Agenda

13
14 Hearing re: Claims Objection Hearing with Respect to
15 Reorganized Debtors Objection to Proof of Administrative
16 Expense Claim Number 19571 (Joe N. Swan)

17
18 Hearing re: Sufficiency Hearing Regarding To Proofs Of
19 Administrative Expense Claim Number 19715 And 19716

20
21 Hearing re: Claims Objection Hearing with Respect to
22 Reorganized Debtors Objection to Proofs of Claim Nos. 13018,
23 13080, and 13309 and Proofs of Administrative Expense Claim
24 Nos. 18900, 19192, 19270, 19633 and 19671 (Ace American
25 Insurance Company, Pacific Employers Insurance Company, and

1 Illinois Union Insurance Company)

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3 Hearing re: Claims Objection Hearing Regarding (i) Proof of
4 Claim Number 15785 and (ii) Proofs of Administrative Expense
5 Claim Numbers 18956, 19539, and 19786
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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay, good morning.
3 In re DPH Holdings.

4 MR. DUNCOMB: Good morning, Your Honor, Brandon
5 Duncomb, Skadden, Arps on behalf of reorganized debtors.
6 With me at the table is my colleague, Louis Chiappetta and
7 from Togut, Segal & Segal, Neil Berger.

8 THE COURT: Good morning.

9 MR. DUNCOMB: So unless you wanted to proceed
10 differently I thought it made sense to do the claims agenda
11 first and then jump over to the omni.

12 THE COURT: Okay. That's fine.

13 MR. DUNCOMB: So I'm happy to report that all of
14 the remaining claims are represented on this claims agenda,
15 and in each case the claims are settled and settled in
16 principal.

17 The first matter on the agenda is the Mississippi
18 workers' compensation claim filed on behalf of Joe Swan,
19 it's claim 19571.

20 On the agenda we've had that reflected as being
21 sent to Your Honor, and since then you've entered it, so
22 thank you.

23 Matters 2 and 3 on the agenda relate to the ACE
24 suite of claims.

25 For those claims we have a settlement in

1 principal. We expect to have that handed up to Your Honor
2 in the next couple of days. We're very close.

3 In the meantime it's reflected it's contested,
4 we'd ask that it be adjourned while we finalize the
5 stipulation.

6 THE COURT: Okay. And this resolves the Michigan
7 claims as part of that process?

8 MR. DUNCOMB: All of the ACE claims, yes.

9 THE COURT: Okay.

10 MR. DUNCOMB: So there's two sets of the ACE
11 claims, one relates to the ongoing Michigan ACE litigation,
12 and we've resolved that as well.

13 THE COURT: All right. So I entered the wind-down
14 order in August and it contemplated hearings on claim
15 objections if they hadn't been resolved, but the parties are
16 comfortable enough at this point that you have an agreement
17 on these that it's unlikely I would have a hearing in
18 December on this.

19 MR. DUNCOMB: Very unlikely. The folks from ACE
20 I'm sure will jump all over me if I'm misstating that, but I
21 think within the next couple of days, I mean if something
22 were to go horribly wrong I guess we'd come to you and seek
23 to have -- do something on an expedited briefing schedule.

24 THE COURT: Okay.

25 MR. DUNCOMB: But I don't know that's going to be

1 an issue.

2 THE COURT: All right, very well.

3 MR. DUNCOMB: And then last, but certainly not
4 least, we have the environmental claims.

5 Happy to report we've settled those as well. We
6 have a settlement that resolves all the remaining
7 environmental claims and the reorganized debtors' other
8 environmental obligations.

9 The settlement -- the procedure here is a little
10 bit different than I'm sure you're used to seeing our claims
11 being presented, at least since we've emerged, and from the
12 reorganized debtors' perspective it's because, you know, we
13 still view, you know, our obligations, we have 11.3 of the
14 plan that allows us to settle and compromise claims, kind of
15 without the Court oversight, but here there's environmental
16 issues that we have other processes that we have to go
17 through, and that entails the notice of lodging, which is
18 how the stipulation was presented to Your Honor, and then
19 there'll be a 15-day public comment period under the
20 settlement. After the public comment period the government
21 will be filing a motion for approval. And then, you know,
22 if the public comment period expires, there are no comments
23 or the government is comfortable that comments don't cause
24 it to change its mind, that motion would seek to have the
25 stipulation entered as is. If the public comments prove

1 otherwise the motion will say something different.

2 THE COURT: Okay. I think I followed that, but
3 just to be sure, I've read the proposed stipulation. It
4 contemplates that process and then has a signature line for
5 the Court, but as I read it that will be submitted to me
6 after that process is done, even the stipulation
7 contemplates the process? Is that how it is or will there
8 be two stipulations?

9 MR. DUNCOMB: No, you're exactly right, that is
10 the stipulation.

11 THE COURT: Okay.

12 MR. DUNCOMB: Unless the public comment period
13 requires some modifications.

14 THE COURT: All right.

15 MR. DUNCOMB: The motion -- timing is going to be
16 tight, but the way that the 15-day comment period runs it
17 runs from -- we have the notice of lodging, but the 15-day
18 public comment period will run from the date it gets
19 published to the federal register. I understand that that's
20 going to be by tomorrow. And so that puts us to about
21 December 2nd, on or about, when we would have to motion
22 filed, and there will be other things that we have to
23 accomplish between December 2nd and the case closing.

24 So the way I think that would work is how the
25 motion would be presented on an expedited basis, order to

1 show cause. If there are no public comments or there's
2 nothing that really needs to be dealt with I guess we'd
3 welcome (indiscernible - 00:05:00) feedback as to how that
4 should be handled, because I don't think --

5 THE COURT: Okay.

6 MR. DUNCOMB: -- we need to necessarily have a
7 hearing.

8 THE COURT: I think -- well, I really don't like
9 orders to show cause because people think, even though I try
10 to make it clear that this isn't the case, that it somehow
11 shifts the burden.

12 So I would prefer it if there are no comments that
13 would cause the parties to change their mind that the
14 hearing on this be scheduled for the next omnibus hearing,
15 which is either the 18th or 19th I think of December.

16 MR. DUNCOMB: There is an omnibus hearing on the
17 18th.

18 THE COURT: 18th.

19 MR. DUNCOMB: But the timing issue I guess that
20 presents from the reorganized debtors' standpoint and under
21 the case closing order is that on the 13th we're required to
22 enter a notice that says all of the claims have been
23 resolved and that the DPH Holdings entity has been
24 dissolved. Those are two of the things that we contemplated
25 having done. So that notice gets filed on the 13th.

1 Also as part of the case closing order there's a
2 provision that says DPH can't resolve until all of the
3 claims are administered, and that won't happen of course
4 until the stipulation is entered resolving the environment
5 claims.

6 So working back --

7 THE COURT: So you'd rather do it on the 12th
8 then?

9 MR. DUNCOMB: Yes.

10 THE COURT: All right. Well, I have -- you know,
11 I've read the stipulation, it's obviously the subject of
12 extensive negotiations by many parties at arms length.

13 I would normally be satisfied doing that by notice
14 of presentment, but given the timing issue I think you
15 probably ought to schedule a hearing for the 12th.

16 MR. DUNCOMB: The 12th or I guess maybe we have to
17 wait until the public comment period expires.

18 But another way we can handle is if there's no
19 comments that come in I don't know if we would need a full
20 hearing, perhaps even a hearing over the telephone would
21 work and we could do it on a more expedited basis.

22 THE COURT: Well you're going to file it on the
23 2nd?

24 MR. DUNCOMB: There'd be a -- yeah, a motion on
25 the 2nd.

1 THE COURT: So let me go back to the other point I
2 made. I don't see how after the 15 days you can have it
3 before your December 13th day. It doesn't -- the timing
4 doesn't work. That's why I thought it would be the 18th.

5 MR. DUNCOMB: Okay. I mean I was thinking perhaps
6 on an expedited basis, but --

7 THE COURT: Right.

8 MR. DUNCOMB: -- we could also do it the 12th.

9 THE COURT: Well no, but the comment period won't
10 be done by then.

11 MR. DUNCOMB: No, the public comment period will
12 be done by November 29th or 30th.

13 THE COURT: No, I thought you said they were going
14 to file it on the 2nd.

15 MR. DUNCOMB: The motion, that's at the
16 conclusion --

17 THE COURT: No, I thought they were going to do
18 the CFR notice on the 2nd.

19 MR. DUNCOMB: No, I'm sorry, let me walk back.
20 So we have the November 8th notice of lodging.

21 THE COURT: Right.

22 MR. DUNCOMB: November 15th that settlement makes
23 us weigh the federal register.

24 THE COURT: Oh, okay. I'm sorry, that's --

25 MR. DUNCOMB: And then the public comment period

1 runs from the 15th for 15 days.

2 THE COURT: I see. So it ends on the 2nd.

3 MR. DUNCOMB: That -- it'll end --

4 THE COURT: I got it.

5 MR. DUNCOMB: -- before the 2nd, we can file the
6 motion on the 2nd, which is the first business day after the
7 Thanksgiving weekend.

8 THE COURT: All right. Well, I still think given
9 the shortened notice issue you probably should have a
10 hearing, and my recommendation would be that you schedule --
11 you seek as part of that notice to have the hearing on
12 shortened notice, and that would be the first thing I would
13 consider at the hearing.

14 Do you have a view on this, Mr. Steinberg?

15 MR. STEINBERG: Your Honor, this procedure is
16 foreign to me. I had asked the questions before the
17 hearing.

18 My understanding is that under the plan the debtor
19 actually doesn't need a hearing if there's a resolution of a
20 claim so that this purpose of a hearing is not because the
21 debtor is seeking such relief.

22 I'm not sure if you've gone through the comment
23 period and the government wants to go forward with the
24 stipulation as written why you need a hearing at all as
25 compared to just presenting it to Your Honor after the

1 comment period is over.

2 So I may have misunderstood.

3 THE COURT: Well, I thought the debtors wanted a
4 hearing.

5 MR. DUNCOMB: The reorganized debtors don't
6 need --

7 THE COURT: You don't -- you don't feel --

8 MR. DUNCOMB: -- don't need the hearing.

9 THE COURT: All right.

10 MR. DUNCOMB: I think it's for purposes of the
11 environmental process.

12 THE COURT: I mean there are a couple of findings
13 in the stipulation, but I -- at least based on what I've
14 read so far, unless someone objected, I'm comfortable making
15 those findings. They're not findings under the Bankruptcy
16 Code, they're findings under other federal statutes.

17 MR. DUNCOMB: Right.

18 THE COURT: But --

19 MR. DUNCOMB: And one of the reasons we --

20 THE COURT: -- I leave it up to you. I mean I
21 don't think I need a hearing.

22 MR. DUNCOMB: Great. So I --

23 THE COURT: But you need to -- the notice needs to
24 give people I guess an opportunity to object, and that's
25 been given, right, as part of the comment process?

1 MR. DUNCOMB: That's right, and that's also --

2 THE COURT: Right.

3 MR. DUNCOMB: -- a part of our thinking in having
4 the notice of lodging on file before the hearing today so it
5 was out -- out in the public and would give Your Honor and
6 others a chance to come into court today as well.

7 THE COURT: Okay. All right. So you can do it --
8 you can do it on -- you can just submit the order like you
9 did with the Mississippi stipulation.

10 MR. DUNCOMB: Thank you, Your Honor.

11 THE COURT: Okay.

12 MR. DUNCOMB: So that's it for the claims agenda.
13 Turning to the omnibus agenda the first matter is
14 the reorganized debtors' motion to dispose of non-essential
15 records.

16 Here we're just trying to address, you know, a
17 voluminous achieve of virial documents going back a long
18 time before the reorganized debtors closed the cases and
19 otherwise kind of wind up their affairs.

20 Now that all of the claims are resolved or nearly
21 resolved DPH's purpose is coming to an end. These records
22 are obsolete.

23 MR. SUMPTER: Excuse me, Your Honor, this is James
24 Sumpter. I wonder if it's possible to get Mr. Duncomb to
25 get a little closer to the microphone. I'm having

1 difficulty hearing him just from a volume level.

2 THE COURT: Okay.

3 MR. DUNCOMB: Is that better?

4 MR. SUMPTER: I think so.

5 THE COURT: Okay. All right.

6 MR. DUNCOMB: So right now we're storing about
7 13,000 boxes off site, annual cost is about \$60,000, and we
8 think we'll be able to dispose of a lot of those.

9 What we're providing for in the motion is that
10 we'd retain records -- medical records and exposure records
11 as required by OSHA, documents that are subject to
12 litigation holds and other document retention agreements.

13 THE COURT: When you say we after the dissolution
14 who is we? Who would be retaining those essential records?

15 MR. DUNCOMB: So what we're doing is we're going
16 to prepay the off-site vendor, so they would continue to
17 store everything that doesn't get destroyed, and you know,
18 there'll be a run off for some of those records. For
19 example, the OSHA records you have a 30-year storage
20 requirement. So it'd start to run those off on a yearly
21 basis that lapse for the records.

22 And as part of the Delaware process there's at
23 least a three-year wind-up period and we will make a
24 provision to have people in place to be administering during
25 that process.

1 THE COURT: So -- so just to play it out, say
2 someone wants an OSHA record how would they go about getting
3 it and how would you be assured that, you know, it isn't
4 lost when they can for it? I.e., it doesn't walk off with
5 them?

6 MR. DUNCOMB: Well, during the wind-up period
7 it'll be the folks running the wind up. I think at the end
8 of the wind up and when their duties expire they'll have to
9 find a way to address that.

10 There used to be a provision I believe under the
11 OSHA regulations that allowed you to turn it over to the
12 government, I don't think that's there anymore, but if it's
13 just everything can be reduced to a CD that might be a way
14 to handle it.

15 THE COURT: Okay. And the wind-up period is for
16 how long again?

17 MR. DUNCOMB: Up to three years. There's a notice
18 that'll go up of the dissolution similar to the bankruptcy
19 claims process, people have a chance to come in after 60
20 days, assert a claim. If there's a dispute between the DPH
21 Holdings view and the claimants view of those claims people
22 can come to the Chancery Court for a period of three years
23 and initiate litigation to resolve that dispute.

24 THE COURT: Okay.

25 MR. DUNCOMB: Since we filed the motion we did get

1 a few informal comments both from the United States and from
2 ACE, so we've made some revisions to the proposed order. I
3 have black lines if I can approach.

4 THE COURT: Okay.

5 MR. DUNCOMB: So the changes here provide for I
6 guess three additional categories of documents to be
7 retained.

8 The first is the environmental records that we're
9 required to turn over to the government under the
10 environmental stipulation.

11 All other environmental records will be retained
12 for a period of time to allow the United States to come in
13 and review and retain, you know, the non-privileged records
14 so that they're not -- they're not lost.

15 And then for ACE we're retaining anything that
16 relates to workmen's compensation or employer liability
17 claims that are insured by ACE.

18 And then otherwise the only objection to the claim
19 was the objection by Mr. Sumpter.

20 THE COURT: Well let me make sure, on the second
21 point this paragraph 5 doesn't limit it to claims that were
22 insured by ACE, it just says -- you know --

23 MR. DUNCOMB: I guess we could clarify that. The
24 debtor insures -- the debtors only insurer was ACE.

25 THE COURT: It's the only one.

1 MR. DUNCOMB: Yeah.

2 THE COURT: All right. Okay.

3 MR. DUNCOMB: It's reliance for a very, very small
4 period, but I don't think that there's anything that's
5 gone --

6 THE COURT: And they were all insured. All of
7 these workers' comp and employer's liability claims were the
8 subject of insurance?

9 MR. DUNCOMB: Not all of the reorganized debtors,
10 there were self-insured states and there were insured
11 states, so this would only apply to claims in the uninsured
12 states.

13 THE COURT: Okay, well, it doesn't say that
14 either. It says and/or as opposed to --

15 MR. DUNCOMB: I'll have to talk to ACE and make
16 sure that they're comfortable with the language, but I think
17 we can clarify that.

18 THE COURT: Okay. And that's because you're
19 assigning and at least in part -- I mean the policy
20 continues and in one case you're assigning it to
21 Mississippi, so they have an ongoing obligation.

22 MR. DUNCOMB: There's an ongoing obligation there,
23 and as part of the -- I don't want to get too far ahead of
24 myself -- but as part of the resolution of the ACE claims
25 they would be taking over the continued administration --

1 THE COURT: Right.

2 MR. DUNCOMB: -- of the claims that they're
3 covering.

4 THE COURT: Right. Do you want authorization just
5 to turn those records over to ACE?

6 MR. DUNCOMB: That essentially is what's going to
7 happen.

8 THE COURT: Okay.

9 MR. DUNCOMB: We have a third-party administrator
10 that handles most of that, so it's not, you know, the
11 reorganized debtor itself that's holding those records, most
12 of those records are either with our third-party
13 administrator --

14 THE COURT: So what's going to happen is you're
15 not being authorized to destroy them now, instead what's
16 going to happen is in practical terms instead of destroying
17 them you're going to turn them over to ACE.

18 MR. DUNCOMB: That's right.

19 THE COURT: Or the administrator.

20 MR. DUNCOMB: Or the administrator.

21 THE COURT: Okay. All right.

22 MR. DUNCOMB: So I guess we can send you a
23 proposed --

24 THE COURT: And the same thing with -- with the
25 records pertaining to the Ohio and Michigan properties that

1 are the subject of the environmental stipulation.

2 MR. DUNCOMB: That's exactly right.

3 THE COURT: It's going -- those records rather
4 than being destroyed they're going to be turned over to the
5 people that are administering that property.

6 MR. DUNCOMB: There are clarifying comments just
7 to make sure that --

8 THE COURT: Okay.

9 MR. DUNCOMB: -- you know, in 30 days before those
10 go effective that we don't -- don't burn our buns.

11 THE COURT: Right. Okay.

12 MR. DUNCOMB: So I mean Mr. Sumpter has an
13 objection so I guess I can --

14 THE COURT: Right.

15 MR. DUNCOMB: -- turn it over to him.

16 THE COURT: And, Mr. Sumpter, I've read your
17 objection. Have you seen the debtors' reply?

18 MR. SUMPTER: No, I have not.

19 THE COURT: Okay. I just want to -- let me
20 summarize it for you then.

21 I think the key point is a footnote in which they
22 say that they do not intend to dispose of the records which
23 they own or control that relate to the first Indiana action.
24 So they're not going dispose of those even though they're
25 not a party to it.

1 And then they assert that the records pertaining
2 to the second Indiana action, since that's -- they assume
3 you're going to appeal it. So since that's ongoing
4 litigation they won't dispose of those either.

5 Is that a fair summary of if debtors' position?

6 MR. DUNCOMB: That's right. I guess for the first
7 category of the Indiana litigation our position would be
8 that we don't have any --

9 THE COURT: You don't have to --

10 MR. DUNCOMB: -- obligation --

11 THE COURT: -- but you're going to.

12 MR. DUNCOMB: But yeah, our intention is not to do
13 anything with those files, it'll -- it'll be turned over to
14 I want to call them new Delphi, Delphi Automotive LLP, we
15 just can't vouch for what they will or will not do.

16 THE COURT: Right. So they say that -- I mean
17 this isn't a discovery response, they roughly say that -- or
18 generally say that they don't have a lot of these records,
19 that they're in the possession of other parties at this
20 point, but to the extent they have them with regard to the
21 second Indiana action they're not going to destroy them
22 because of the pending appeal.

23 And on the first one, even though they're not a
24 party and they believe they don't have an obligation to hold
25 them they will hold them or they won't destroy them and

1 they're going to be turned over to Delphi Automotive LLP.

2 So I think that resolves your objection, but I'm
3 happy to hear you on it.

4 MR. SUMPTER: Well, I'm pretty happy with that, as
5 long as it, you know, comprehends the things that they
6 would, you know, keep under the idea of things that they
7 think are related to the case.

8 THE COURT: Right.

9 MR. SUMPTER: I'm talking about that they -- that
10 comprehends those things I have in the list. Other than
11 that I'm pretty happy.

12 THE COURT: Okay. Well they make it clear they
13 don't think they have everything now that's on your list --

14 MR. SUMPTER: Right.

15 THE COURT: -- but as I take it to the extent they
16 do have them they're not going to destroy them.

17 MR. SUMPTER: Okay.

18 MR. DUNCOMB: That's right, Your Honor.

19 THE COURT: Okay. All right.

20 So I mean the record is clear on that. I think
21 that you could either put that in the order also or
22 alternatively you can send a letter to Mr. Sumpter
23 confirming it. Either way.

24 MR. DUNCOMB: Would it work to send him a letter
25 attaching the reply and saying we intend to live up to what

1 we said in the reply, something to that effect?

2 THE COURT: Yeah, that's fine. Okay. Because I
3 think the reply speaks for itself on this point and we've
4 clarified what it means on the record.

5 MR. DUNCOMB: So that objection is overruled?

6 THE COURT: Okay. All right. So no one else
7 having anything to say on this motion and obviously given
8 the eminent winding up of this case the debtors need to deal
9 with roughly 13,000 boxes of records, the vast majority of
10 which are no longer required, I'll grant the motion.

11 MR. DUNCOMB: Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. DUNCOMB: The next one --

14 THE COURT: So after you run the -- that
15 paragraph 5 by ACE, and you know, get clarity on that
16 provision you can email the order to chambers.

17 MR. DUNCOMB: Thank you.

18 THE COURT: Okay.

19 MR. DUNCOMB: Next item on the omnibus agenda is
20 the general motors matter, so I'll turn the podium over to
21 Neil Berger.

22 MR. SUMPTER: Excuse me, at this time, Your Honor,
23 if it's okay I'll go ahead and hang up.

24 THE COURT: That's fine, you can ring off.

25 MR. SUMPTER: All right, thank you.

1 THE COURT: Thanks.

2 MR. BERGER: Good morning, Judge.

3 THE COURT: Good morning.

4 MR. BERGER: I'm Neil Berger, Togut, Segal &
5 Segal, we represent the reorganized debtors in connection
6 particularly this morning regarding the motion to compel,
7 that's item 2 on this morning's omnibus agenda.

8 Your Honor so ordered a third stipulation between
9 GM and the reorganized debtors, and pursuant to that
10 stipulation we have agreed to provide a short status report
11 to Your Honor.

12 We have reserved the December 12 hearing in the
13 chance that there are issues that would need to be addressed
14 by the Court.

15 A short status simply is, Your Honor, that we have
16 resolved the most significant issues that existed between
17 the reorganized debtors and General Motors. You did so
18 order a stipulation at docket 22200, and those largest
19 issues have been resolved.

20 General Motors did fund the amount that was
21 specified in that stipulation in connection with the
22 environmental settlement that Mr. Duncomb spoke about this
23 morning.

24 There are a number of other issues that we're
25 working our way through.

1 Your Honor may recall that the parties addressed
2 the Court regarding a number of State Court actions, product
3 liability, personal injury claims, they are not claims in
4 this case, they need not be resolved for purposes of closing
5 the case. When we started we had 12 or 13 of those, we're
6 down to the last 2.

7 One is the subject of a mediation that started the
8 day before yesterday and we're hopeful that will be
9 resolved.

10 The last action also is a personal injury/product
11 liability litigation. General Motors Canada is a co-
12 defendant in that action.

13 We've begun conversations with General Motors with
14 a view that potentially General Motors would take over the
15 Delphi slot -- defendant's slot in that action to control
16 its destiny in that action.

17 So I'm hopeful that those last two items would --
18 would be resolved in the near term. We speak with counsel
19 for GM very frequently, we're trying to work our way through
20 the last items in connection with the funding.

21 We do have the December 12th hearing set aside in
22 the off chance that we can't find a solution for an issue
23 we'd come back to Your Honor, but I'm confident that given
24 the history that we've had and the negotiations we will be
25 able to find a solution.

1 So for today --

2 THE COURT: I guess that's the other reason why we
3 didn't really need a hearing on the environmental
4 stipulation if the comment period went by --

5 MR. BERGER: That's right. That's right.

6 So for today --

7 THE COURT: -- on the timing.

8 MR. BERGER: -- it's a status, Your Honor, we're
9 not asking Your Honor to make any decisions --

10 THE COURT: Okay.

11 MR. BERGER: -- today.

12 THE COURT: The patent issues went by the boards?

13 MR. BERGER: That was -- that was an error.

14 THE COURT: Okay.

15 MR. BERGER: I don't think there was a patent
16 issue.

17 THE COURT: All right. Okay.

18 MR. BERGER: It was the personal injury and --

19 THE COURT: All right.

20 MR. BERGER: -- and product liability issue.

21 So for today, Your Honor, that's my status, and
22 I'm prepared to answer any questions.

23 THE COURT: Okay. Is that -- is that your take on
24 it also, Mr. Steinberg?

25 MR. STEINBERG: Yes, Your Honor.

1 I would want to make just two additional comments.
2 When Mr. Berger said that they're not creditors in
3 the case I think the more technical response is they have
4 never filed claims in the case so there's nothing to
5 adjudicate.

6 It's our position that with respect to many of
7 these that have been resolved, and at least one of them that
8 hasn't been resolved, that the actual injury took place
9 during the administration of the case and therefore they
10 were subject to bar dates.

11 So while they didn't file a claim in the case I
12 don't want them to say that they won something that should
13 have been dealt with in the case if the creditor had acted
14 in an appropriate way.

15 And the second thing is, is that the December 12th
16 date comes 12 days after or 15 days after we will get our
17 last budget in the case, and we have worked hard in trying
18 to resolve our issues, and I assume that if we have any
19 remaining issues they will be fleshed out by the final
20 budget that we will be presented, and if we haven't been
21 able to resolve them we'll try to tee it up so that Your
22 Honor will be able to resolve it for us on the December 12th
23 hearing.

24 THE COURT: Okay. And I guess I'm -- based on
25 what you just said right before then, is there a possibility

1 that I'll have a hearing on one or more of these claims
2 then?

3 MR. BERGER: I don't think so. None of them have
4 filed claims, and certainly the reorganized --

5 THE COURT: Well but -- okay. They're not
6 asserting a claim now.

7 MR. BERGER: They're not asserting a claim now --

8 THE COURT: All right.

9 MR. BERGER: -- and I think it's consistent
10 with --

11 THE COURT: So there wouldn't be a Pioneer motion
12 or anything like that.

13 MR. BERGER: We haven't seen --

14 THE COURT: All right.

15 MR. BERGER: -- or heard anything about that and
16 we'd certainly resist that.

17 THE COURT: Okay. All right.

18 MR. BERGER: That's all I have for today, Your
19 Honor.

20 THE COURT: All right. Well, I'm glad you've been
21 able to cooperate to narrow down those issues to the extent
22 you have, which is a lot.

23 MR. BERGER: Thank you, Judge.

24 THE COURT: Okay.

25 MR. DUNCOMB: Your Honor, the final matter on the

1 agenda relates to the Duxbury matter.

2 THE COURT: Okay.

3 MR. DUNCOMB: I believe Cindy Haffey is here from
4 Butzel, but there's been a settlement on that claim so I
5 don't believe it's going forward.

6 THE COURT: Well, I certainly got an email I guess
7 yesterday that the matter was not going forward and it
8 settled in principal, so I guess I'll be looking for a
9 stipulation on that? Right? Yeah?

10 MR. DUNCOMB: I think that's right.

11 THE COURT: Okay. All right. And that's fine.
12 That was all that was on the agenda.

13 I did go back before this hearing and look at the
14 wind-down order, and it also contemplated dealing with the
15 adversary proceedings, but I gather those are not going to
16 be presenting a problem for closing the case?

17 MR. DUNCOMB: I believe all the adversary
18 proceedings, you know, substantively have come to a
19 conclusion. There are a couple that are still open just
20 because payments are still being made as part of the
21 settlement, but --

22 THE COURT: All right.

23 MR. DUNCOMB: -- but otherwise they've been
24 resolved.

25 THE COURT: Okay. So the reservation of time for

1 dealing with open adversary proceedings is not going to be
2 necessary either.

3 MR. DUNCOMB: That's correct, Your Honor.

4 THE COURT: Okay. Good. All right.

5 MR. OLSHIN: Your Honor, this -- excuse me -- this
6 is Lew Olshin from ACE.

7 THE COURT: Yes.

8 MR. OLSHIN: I just wanted to mention to Your
9 Honor that although the District Court had affirmed Your
10 Honor's order in the ACE matter with Michigan --

11 THE COURT: Right.

12 MR. OLSHIN: -- Michigan has appealed that matter
13 to the Second Circuit.

14 So we have not received -- the case has not been
15 argued so we have not received a decision from the Second
16 Circuit on Your Honor's finding in favor of ACE and Pacific
17 on our motion for summary judgment.

18 So that case is still out there, and I just wanted
19 to mention that to Your Honor.

20 THE COURT: Okay. But ACE's claims are subject to
21 this agreement in principal, and those include as relating
22 to Michigan though.

23 MR. OLSHIN: The claims themselves are, Your
24 Honor, is correct, are part of the stipulation where we've
25 reached an agreement in principal.

1 I was really just saying in response to Your
2 Honor's indication that all the adversary proceedings were
3 done, I just wanted to mention that that matter is still on
4 appeal.

5 THE COURT: Right.

6 MR. OLSHIN: And I guess, you know, don't want to
7 jinx myself, Your Honor, but I guess there's always the
8 potential that some portion of that case could be remanded
9 depending upon what the Second Circuit did. But, you know,
10 we're confident and hopeful that the Second Circuit will
11 affirm --

12 THE COURT: Okay.

13 MR. OLSHIN: -- but it's still pending.

14 THE COURT: Well, I appreciate your raising that.

15 My focus really was more on the adversaries that
16 were pending in front of me that were referred to in the
17 wind down-motion, which were basically the avoidance
18 actions. But I've been getting a slew of dismissal orders
19 in light of I guess performed settlements and I just wanted
20 to confirm that there were none of those going forward as
21 had been contemplated in the wind-down order if they needed
22 to be.

23 MR. OLSHIN: Thank you, Your Honor.

24 MR. DUNCOMB: And just to clarify, from the
25 reorganized debtors' perspective, I mean we cited some cases

1 in the case closing motion that we intend to go forward with
2 the case closing despite outstanding appeals in some of the
3 adversaries.

4 THE COURT: Okay. I mean one can always reopen a
5 case for a specific purpose, so that's fine.

6 All right, very good. Thank you.

7 MR. DUNCOMB: Thank you, Your Honor.

8 THE COURT: So I'll look for the -- so I guess
9 you're going keep track of the United States, under the
10 stipulation they're supposed to submit the request, but I'll
11 look for the order I guess some time, you know, in early
12 December.

13 MR. DUNCOMB: That's right. And it will be
14 presented to you on a motion just to fulfill the requirement
15 from the government's perspective.

16 THE COURT: Okay.

17 MR. DUNCOMB: But, yes.

18 THE COURT: Okay.

19 MR. DUNCOMB: Thank you.

20 THE COURT: Thank you.

21 (Whereupon these proceedings were concluded at 10:36
22 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
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